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SUMMARY RECORD OF THE 1792nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 22 October 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Second periodic report of the Republic of Korea (CCPR/C/114/Add.1 and CCPR/C/67/L/KOR) (continued)

1. At the invitation of the Chairperson, the Korean delegation resumed their places at the Committee table.

2. Mr. BHAGWATI noted the progress that had been made in human rights in Korea, but said there was still room for improvement and echoed the concerns expressed by the other members of the Committee. He would like some clarification of article 111 of the Constitution, laying down the functions of the Constitutional Court, which stated that the Court examined the constitutionality of laws at the request of the courts and "constitutional complaints as prescribed by Act". He wished to know what was meant by that formula: whether an individual could challenge the constitutionality of a law by submitting a complaint directly to the Constitutional Court or whether only the courts could submit such a complaint. That was not clear from the wording of article 111 of the Constitution. He wondered also whether there had been cases of individuals contesting the constitutionality of a law by citing a violation of the Constitution or the Covenant, and whether any law had actually been declared unconstitutional.

3. He was concerned also about the independence of the magistracy, which was at the heart of democracy, the rule of law and respect for human rights. He considered the irremovability of judges particularly important, since, if judges depended on the goodwill of a political party to remain in office their independence was compromised. Thirdly, he had noticed in paragraph 167 of the report, concerning the application of article 14, paragraph 3 of the Covenant, a surprising practice: "upon recognition that a witness cannot make a sufficient statement in the presence of the accused [...], the accused can be ordered to withdraw from the court to allow the witness to state his or her opinion. In this case, when the witness has finished his or her oral statement, the gist of the statement shall be announced to the accused by the court official after returning the accused to the courtroom (para. 297 of the Penal Procedure Code)". He wished to know in what circumstances that procedure was applied and how, in such conditions, the accused could cross-examine the witness, for, if he could not, the safeguard of article 14 was breached.

4. He referred to a communication from a Korean who had applied to the Committee under the Optional Protocol because he had been convicted for trade union activities. The Committee had recommended that he be compensated. The author of the communication had been obliged to bring an action for damages, which had been taken as far as the Supreme Court and had failed. Consequently, the Committee's recommendations had not been put into effect. He wished for some clarification. Lastly, he expressed surprise and sadness at the practice of including fingerprints on identity cards, which was tantamount to treating the holder as a potential criminal.

5. Mr. HWANG (Republic of Korea), replying to the oral questions on the National Security Law, said that some of them, he felt, arose from a misunderstanding about the type of

person detained under it. Of those detained, 83 per cent were members of Hanchongnyon, the Korean Federation of General Student Councils, which had as its main aim the overthrow of the Government of Korea in accordance with the unification designs of the socialist regime imposed by the dictatorship which had ruled North Korea for over half a century, whose main argument was that the Republic of Korea had been colonized by the United States. Hanchongnyon had decided to attack and overthrow its enemy, the Government, through incessant violent and destructive action by militant organizations with telling names such as Front Line, Anti-American Entity and Liberation Army, set up to organize illegal demonstrations during which they used fire hoses and Molotov cocktails. A policeman had been stoned to death and 6,000 people had been injured at Seoul University in 1996. To give the Committee a proper idea of the violence of the 1996 student demonstrations, the Korean delegation had circulated a brochure by the National Security Agency with photographs of students confronting riot police, throwing stones and brandishing hoses, and of masked individuals setting fire to police officers and barricades. The university buildings had been sacked and destroyed during the demonstrations. Hanchongnyon had never shown any remorse over the result of the violence and had even boasted of its triumphant victory. In 1997, during a University opening procession, the students had occupied and blocked the main Seoul thoroughfare for seven days, thrown grenades and caused the death of a policeman. They had seized two civilians whom they took to be police informers and beaten them to death with fire hoses. The Supreme Court had thus ruled on 3 September 1998 that the central Hanchongnyon organization was an organization in enemy service within the meaning of article 7, paragraph 3, of the National Security Law. Since then some students had left the movement, but those who still belonged were pursuing their subversive activities to overthrow the lawful Government of the Republic of Korea, which would take rigorous measures to uphold order. Other than students, the majority of those convicted under the National Security Law were spies, accomplices in espionage or persons accused of having relations with North Korea.

6. The law-abiding oath had taken the place of the ideological conversion oath, which had been in force for over 60 years and had its origins in Japanese colonial legislation. Upon coming to power, the present Government had attempted to abolish the system entirely, but had been checked by hostile public opinion. Consequently, it had replaced the ideological conversion oath with the law-abiding oath, which was not in conflict with freedom of expression.

7. Questions had been asked about the Government's issuing of a directive urging the executive to interpret the National Security Law strictly and apply it with caution: such a directive could not be imposed on the judicial authorities. While that was true, it was to be noted that the judiciary voluntarily respected the obligation to interpret the law strictly.

8. Concerning the revision of the National Security Law, background knowledge of Korea was once again required in order to understand the situation. The political parties in the ruling coalition held a slim majority. The opposition Grand National Party, numerically the largest, was openly hostile to the revision of the Law, considering the Korean public in general to be opposed to the revision. The Grand National Party had even launched a petition against the revision; thus it was clear that the National Security Law was not abused by the Government.

9. Mr. KIM (Republic of Korea) added that the laws and regulations of a country generally reflected its history and society, which were never fixed but in constant flux. It was in that light

that the Government of Korea envisaged amending the National Security Law. When the Government came to power, there had been debate as to whether to abolish the Law. Now, however, it was felt that abolition would be too radical a measure, and that revising certain articles would be more appropriate. Article 7 was currently under discussion: that article could admittedly be problematic. His delegation could not agree that the law was terrible; it was a law that reflected the terrible situation in Korea. The fact that the law had both supporters and opponents was a mark of the pluralism of Korean opinion. The authorities would seek a national consensus on the wording of article 7 and would take into account the opinions expressed by the Committee, which provided guidance to States parties on the way to comply with the Covenant.

10. He went on to reply to the questions about the revision of the Korean Civil Code. There were three main elements to the proposed revision: whether the status of head of the family should continue to be limited to men; whether the mandatory waiting period for remarriage after divorce should be maintained; and whether the prohibition of marriage between people with the same surname and family origins should remain. Debate on the subject in the Republic of Korea had been very animated, particularly as it concerned the status of women, and traditionalists had expressed opposition to any amendment of laws which in fact reflected culture and history. In the end, the Government had decided to abolish the mandatory waiting period for remarriage after divorce. The relevant provision had been amended and the text was currently under examination by the National Assembly. Second, the Government had been unable to identify any national consensus or convergence of opinions on abolition of the provision restricting the status of head of the family to men. Third, the same was true of the prohibition of marriage between people with the same surname and family origins. In practice, however, administrative arrangements were occasionally made for people affected by the provision to register their marriages under the law. In the present climate, there was no consensus for the abolition of that provision.

11. Two members of the Committee had noted the imbalance between the numbers of male and female births and linked it to abortion and foetal gender selection. Abortion was a crime under the Penal Code, but there was a law permitting abortion in three situations: rape, incest, and where pregnancy might have very serious consequences for the mother. His delegation had no figures to show whether there really was an imbalance between the numbers of boys and girls born. There was an undeniable preference for boys among the Korean population, but it was considerably less marked in the cities than in the countryside. It was thus a question of education, and the Government would have to act to dissuade the public from using illegal abortion to favour the birth of boys.

12. It had been observed that the budget of the Republic of Korea for combating domestic violence was too small, which was true. The Government would attempt to increase that budget as part of its efforts to improve women's status. Regarding labour discrimination and equal pay, mention had been made of the difficulties encountered by women at the head of small companies. He would say that there was no discrimination in law and that it was the duty of the Government to combat de facto discrimination. The delegation had been asked if it had an English-language version of the National Plan to improve the position of women (paras. 36-38 of the report); unfortunately it did not, but would send a copy to the Rapporteur, of the Committee.

13. The Committee had asked whether in 1996 the 10 per cent target for women employed in the civil service had been achieved. It had been met in the Ministry of Foreign Affairs, where the latest recruitment examinations for foreign-affairs officials had led to the employment of eight women out of a total of 40 new recruits, representing 20 per cent. The Ministry of Justice remained more conservative. It must be remembered, however, that the target was a guideline, a recommendation, not a hard and fast rule. The Presidential Committee on Women (see para. 39 ff. of the report) was under the direct control of the President, to whom it reported, while its predecessor, the Committee on Gender Policy, had been under the authority of the Office of the Minister of State. It had quite a broad mandate: where it perceived gender discrimination contrary to the principle of equal rights, it issued an opinion and, if the matter was not resolved to its satisfaction, it could take legal action and lodge an accusation. The Committee had asked whether rape was covered by the definition of domestic violence. The two members of the delegation who worked as public prosecutors said that it was. However, they were not aware of any case in which a wife had accused her husband of the crime of rape.

14. Mr. LEE (Republic of Korea) said he would respond to the questions about safeguards for people under arrest or in detention. Unfortunately, the delegation had had too little time to compose its replies, and the questions which had not been answered would be dealt with in the next periodic report.

15. Access to counsel was a right protected in law and in practice that applied equally to people suspected of violations of the National Security Law. Once a month, public prosecutors visited the premises of the Agency for National Security Planning. Those premises were not to be used to hold people under arrest, but people suspected of violating the National Security Law could be detained at the police station closest to the Agency so the public prosecutors also made monthly visits to the police stations. As stated in the report (para. 118), a review of the legality of an arrest was possible but not automatic; the person concerned had to request it. In 1999, approximately 77 per cent of those arrested or detained had requested a review. The investigating authorities were required to inform suspects under arrest that they were entitled to the services of counsel. In practice, if a suspect did not have a lawyer, the Bar Association was asked to appoint the duty lawyer of the day. Suspects could be held in detention for up to 30 days, or up to 50 days if suspected of violating the National Security Law. The public prosecutor's department could release them at any stage. Once charged, they could be detained for a maximum of six months, but could be released on or without bail. The Minister of Justice had given instructions that investigation without detention of the suspect should be the rule, and the Supreme Court had ordered all courts to follow it strictly.

16. Confessions obtained by means of torture were not admissible as evidence and investigation service officers found guilty of ill-treatment or torture never escaped unpunished. During the period 1995-1998, the authorities had received 57 complaints of torture, of which 51 had been declared inadmissible and five were still under investigation: in the remaining case, charges had been brought, but the defendant had been found not guilty. An accomplice's confession could serve as evidence, according to case law of the Supreme Court. There were no rules governing medical intervention during an investigation, but if a suspect was ill, the police or the public prosecutor would call a doctor. In emergencies, a suspect could be arrested without a warrant and kept in custody for 48 hours; after that time he could be held only if a court had issued a detention warrant within the 48 hours: otherwise, he had to be released.

17. Regarding the independence of the National Human Rights Committee, it was to be noted that its members could not be removed from office unless physically or mentally infirm or sentenced to imprisonment or disciplinary sanctions. The Committee established its own general policy totally independently of the Ministry of Justice, to which it was not even required to report.

18. Mr. KIM (Republic of Korea) added that the human rights bill currently before the National Assembly clearly said that the Human Rights Committee would be able to make recommendations to the military authorities and security organs. While they would only be recommendations, the publicity they received would ensure that they had a certain influence. As concerned the death penalty, a member of the Committee had asked about the fate of a Pakistani national and his accomplice who had been sentenced to death for murder. Both had been granted amnesty and were now in their home country; he was not aware whether they had been tortured during the investigation. The abolition of the death penalty was a long-term objective and no date had been set for the time being. Some 30 persons under sentence of death were currently in Korean prisons. No execution had taken place in recent years, particularly since the new Government had come to power.

19. His delegation had taken careful note of the Committee's comments to the effect that article 37, paragraph 2, of the Constitution could conflict with the Covenant; he assured the Committee that the restriction made in that paragraph was only ever narrowly interpreted.

20. Mr. HWANG (Republic of Korea) returned to the appointment of judges, which appeared to be of great concern to the members of the Committee. A judge's functions were surrounded by safeguards enshrined in the Constitution and the Courts Organization Act. Would-be judges had to take an examination which only a very small number of candidates would pass: following that, they underwent two years of training at the Judicial Training and Research Institute. Depending on their results and wishes, they would become judges, public prosecutors or lawyers. Judges were not irremovable: such a system would not be popular among Koreans. Instead, there was a reappointment system. It was extremely rare, however, for a reappointment to be refused. Recently, it had been necessary to replace three Supreme Court judges because their mandate had expired. The President of the Supreme Court recommended candidates although, according to the law, judges were appointed by the President of the Republic with the approval of the National Assembly: that power of recommendation was the guarantee that Supreme Court judges were fully independent of the executive. The reappointment of judges was being studied by a number of non-governmental organizations and there were no grounds for fearing that the system could be used to eliminate particular judges or force them to act in a certain manner.

21. Concerning the difficult issue of the relationship between international treaties and national legislation, article 6 of the Constitution provided that treaties ratified under the Constitution had the same effect as the laws of the Republic. That provision was subject to differing interpretations in Korea, where the issue was debated widely. There were different laws with the following hierarchy: the Constitution had supreme authority, followed by the laws passed by the National Assembly, then the presidential decrees provided for by those laws and, finally, ministerial regulations. International treaties were also very varied and not all had the same weight. Certain provisions of international law put States parties under binding

commitments to the international community, but that did not automatically mean that individuals were entitled to invoke them directly. The place of each international provision within national law had to be determined case by case. Supreme authority to interpret the laws lay with the Supreme Court, but, to date, no ruling had been made on the issue. Lastly, his delegation needed more time to reply to the question about laws being ruled unconstitutional.

22. The CHAIRPERSON thanked the delegation for the information and invited it to reply to questions 12 to 19 on the list of issues.

23. Mr. LEE (Republic of Korea), replying to the question about telephone-tapping, said that in 1993, pursuant to article 18 of the Constitution guaranteeing the privacy of correspondence, the Government had passed a law on protection of correspondence, regulating the conditions in which telephones could be tapped and communications could be restricted by the authorities. The rule was that such measures could be taken only with written authorization from a judge. The law restricted the cases in which tapping was authorized: it was allowed in the event of infractions listed in the Criminal Code or breaches of the legislation on narcotics and psychotropic drugs. The public prosecutions department had to seek authorization from a judge, who could provide it for no more than three months. If national security was at risk, authorization had to be obtained from the presiding judge of a higher court and could be provided for no more than six months. In emergencies, the public prosecutor's department or an officer of the criminal investigation service could take action to restrict mail and telephone communications but had to secure authorization within 48 hours of doing so, failing which the restriction must be lifted immediately. Illegally intercepted mail and telephone conversations could not be admitted as evidence in court or disciplinary proceedings and the culprits were liable to prosecution and could be sentenced to up to seven years' imprisonment. The judicial authorities issued 445 authorizations in 1997, 480 in 1998 and 124 from 1 January to the end of May 1999, mostly in connection with drugs or arms trafficking. On 11 December 1998, a proposal to amend the law on protection of correspondence, increasing the penalties for illegal telephone-tapping and offering improved protection for information acquired by such means had been submitted to the National Assembly. Pending adoption of the new text, the Minister of Justice had given instructions for all documents pertaining to telephone-tapping to be protected and for officers of the criminal investigation service to be strictly supervised when they took such measures.

24. Mr. HWANG (Republic of Korea), responding to issues 13 and 14, said that before describing progress in labour relations since the submission of the previous periodic report, he must point out that Korea had entered a reservation to article 22 of the Covenant. Despite that reservation, the Government had continued its efforts to reform labour legislation and on 15 January 1998, the first tripartite commission, consisting of representatives of the Government, the employers and the workers, had met. The goal had been to overcome the economic crisis and establish new working relations among all the parties. The commission had concluded by adopting a social agreement representing a commitment on all sides to turn the national economy around. A second tripartite commission had met to review progress in implementing the decisions taken by its predecessor and consider further action. In May 1999, a law on the establishment and functioning of the tripartite commission was passed to reinforce the commission's role as an advisory organ. The third tripartite commission would begin work on 1 November 2000 and would undertake a detailed examination of all labour relations issues.

25. Concerning restrictions on trade union membership and the right to strike, notable improvements had been secured in the recognition of trade unions. The 1997 Law on trade unions and labour relations strengthened workers' rights to form and join trade unions. Until then, there had been only single trade unions, and the Government was making efforts to unify the collective bargaining mechanisms. The unification process would require time, and it was one of the issues which the tripartite commissions were called upon to examine. The first tripartite commission had decided on 6 February 1997 to revise all provisions relating to teachers' unions, and the second commission had reached agreement on how to safeguard teachers' right to form and join unions. A draft adopted on 6 January 1999 would permit teachers to form and join unions from 1 July 1999. The issue of teachers' unions was extremely controversial, since Confucian tradition held teaching as an almost sacred profession. Hence, agreement by the commission and willingness on the part of the Government had been essential to progress. On 1 July 1999, teachers' groups including the Federation of Korean Trade Unions, the Korean Union of Educational and Teaching Workers and the Confederation of Teachers' Organizations had all established trade unions. The first tripartite commission had decided on 6 February 1998 to grant civil servants the right of association. In the first instance they had been authorized to form workplace associations; the organization of proper unions would be the second stage. A law to that effect had been adopted on 20 February 1998 and had entered into force on 1 January 1999. Civil servants' associations had therefore been set up in the workplace to discuss matters such as health, working conditions and efficiency. Only civil servants at grade 6 or below could belong to associations, those from grade 5 upwards being classed as administrators. Most civil servants could be members of such associations, since only 8 per cent (the upper ranks) were not. The number of workplace associations could be expected to increase considerably when the second phase of civil service reorganization reached completion. All questions relating to the establishment of trade unions as such would be examined at the forthcoming meetings of the tripartite commission, which would review the results of the associations' work and would also take public opinion into account.

26. In relation to the arrests of trade union leaders, it had to be emphasized that the Korean Government guaranteed basic trade union rights such as freedom of association and the right to collective action. However, it did take care to ensure that illegal activities accompanied by violence and destruction were punished. In the Republic of Korea, strikes often led to violence, and illegal occupations of university sites or buildings and damage to property were common. The Government tried to arrange compensation for victims, but to little avail. The Constitutional Court had, moreover, declared the Civil Code provisions inadequate for punishing troublemakers in illegal strikes, since, often, the union agitators in such strikes were not in a position to compensate their employer for the damage inflicted, and, as proceedings by an employer against trade unionists often led to more industrial action by workers, employers would then withdraw their complaints. That was the context in which 14 trade unionists had been sentenced or were currently in detention awaiting trial. The Government would continue to guarantee the right to strike, but it intended to suppress illegal strikes accompanied by violence or destruction, acting within the law and in conformity with internationally recognized standards. Generally, the authorities were determined to improve the labour relations system and carry out the reforms needed to turn the economy around.

27. In reply to question 15, he said that the organizers of open-air demonstrations were required to inform the head of the relevant police station. When it was clear that the

demonstration posed a risk to peace and public order, the head of the police station could ban it, providing written notification and reasons for the ban to the organizers. His decision could be challenged before the competent municipal or provincial authorities, which were required to acknowledge receipt of the challenge within 72 hours and reach a decision within 24 hours following the acknowledgement of receipt, failing which the ban was invalidated. The demonstration could also go ahead if the ban was patently illegal or unreasonable. In such cases, the decision to ban could be challenged before a higher court within 10 days, and the court had three months in which to give its ruling.

28. Mr. KIM (Republic of Korea) said in reply to question 16 that the principles of equality of rights, particularly between men and women, and of non-discrimination were enshrined in the Korean Constitution. Additionally, the human rights bill contained language designed to prevent all discrimination on the grounds of sex, religion, age, social background, race, colour, national origin, political opinions and other factors.

29. Turning to question 17, he emphasized the provisions of article 6, paragraph 2, of the Constitution, whereby the status of foreigners was guaranteed in accordance with international law and the provisions of international instruments. Enforcing that article was the responsibility of the immigration services under the supervision of the Ministry of Justice, each branch of which had an official responsible for checking at least once monthly that foreigners' rights were being respected and recording his findings. There was no other organ responsible for seeing that foreigners' rights were respected but there was a mechanism for appealing against decisions by the immigration services. No law guaranteed Koreans and foreigners equal employment rights. Foreigners wishing to spend more than 90 consecutive days in the Republic of Korea were required to obtain a residence permit. Such permits were not granted to manual workers. Official figures indicated that at the end of 1998 there had been more than 160,000 foreign workers in the country and illegal workers numbered over 100,000 more. Both categories were subject to the standards for equality in employment. Hence, illegal migrant workers who suffered ill-treatment could complain to the labour inspectorate and the law on working conditions applied to them. They were, however, required to leave Korean territory after receiving compensation. Foreign industrial trainees were permitted to remain in Korea for a maximum of three years, but their stay could be extended if they had lived there for at least two years and received a certificate of competence.

30. Concerning the action taken on the Committee's recommendations in three matters which it had examined (question 18), the Committee had asked the Korean authorities to ensure that the authors were compensated, take steps to avoid any repetition of such occurrences, and publicize its findings. Compensation could be granted under the law if a convicted person was found innocent of the offences attributed to him, was retried, or brought legal proceedings for compensation. Neither Mr. Kim (communication No. 574/1994) nor Mr. Park (communication No. 628/1995) had asked to be retried or compensated. Mr. Sohn (communication No. 518/1992) had lodged an appeal with the Supreme Court, which had been dismissed in March 1999, and hence could not claim compensation. The action taken to prevent a repetition of such occurrences had already been described in replies to other questions by the Committee. Lastly, the Government had had translated and publicized in the media in March 1999 the Committee's findings on the three cases. The Permanent Mission of the

Republic of Korea at Geneva had sent the Office of the United Nations High Commissioner for Human Rights information about Mr. Sohn when it had been asked for information about Mr. Park; that error would be corrected.

31. In reply to question 19, Mr. Kim recapitulated paragraphs 12 to 14 of the report and added that human rights education was now provided in schools and universities.

32. The CHAIRPERSON thanked the Korean delegation and invited members of the Committee to ask additional questions.

33. Lord COLVILLE commented that the development of electronic technology in the Republic of Korea was at a very high level, as indicated in paragraphs 180 and 181 of the report (CCPR/C/114/Add.1). However, the situation as described by various non-governmental organizations had been passed over in silence, and the report gave no information on the enormous electronic databases which had been set up. States parties were required to take account of the Committee's General Observations when compiling reports; the Committee had produced a General Observation (No. 16) concerning article 17 of the Convention, in particular the protection of privacy and databases. Thus, the Korean authorities were required to refer to it when describing the implementation of article 17 in their country.

34. He noted that the Republic of Korea had a national computer network which had enabled it to compile a mass of information on every individual. Had the State established, or was it planning to establish, any other such facilities? It would be equally important to know what information was held in the databases and for what purposes. All the evidence suggested that private organizations also had computer databases; the State party ought in every case to take care to ensure that individuals could check what information on them was being held on databases and have access to it so that any errors would be rectified. It was important also, following the European model, to establish independent watchdog bodies to uphold the right to inviolability of one's private life. He understood that the protection of personal information held by public or private organizations was essentially governed by criminal law. That was most unsatisfactory, since the issue of databases was much broader than the scope of criminal law and embraced aspects of private life which belonged in civil law. He was aware that the issue was broad and complex, and that the Korean authorities needed time to consider it in depth; he did not expect an immediate reply. The matter should, however, be dealt with in detail in the next periodic report, notably in the light of the practice and legislation of other countries.

35. The Korean delegation had indicated that a genetic database was being set up. He wished to know what for, what information it would contain, who and what offences it would cover, and on what grounds. In his view, people DNA-tested in a rape case and shown by the test to be innocent should not be included in the database. He would be glad to hear what the Korean delegation had to say on the subject.

36. Lastly, he queried the practice of putting fingerprints on identity cards, which raised questions about respect for private life and the prohibition of degrading treatment. He expressed a wish for clarification on that issue also.

37. Mr. KLEIN noted from paragraph 213 of the report that demonstrations on main roads could be prohibited by presidential decree. Such a general and abstract prohibition did not seem to be in accordance with article 21 of the Covenant in that it was imposed by presidential decree and not under a law as article 21 required.

38. The clause mentioned in paragraph 222 of the report, limiting to one the number of trade unions in an enterprise, was contrary to article 22 of the Covenant and represented a restriction on freedom of association: observations would have to be made on the subject.

39. Paragraph 227 of the report stated that "members of the press are now permitted to join [political] parties". He was surprised that the authorization dated only from December 1993 and wished to know whether other categories of people were prohibited from joining. Regarding the statement in paragraph 192 that "political activities of religious organizations are forbidden", he wished to know the legal basis for the ban and what was to be understood by "political activities". Were churches, for example, prohibited from protesting at social injustice?

40. Mr. KIM (Republic of Korea), in reply to the question on fingerprints, agreed it was fair to ask why Korea continued to take fingerprints when it had asked Japan to stop doing so. Korea was in fact challenging an inequality, for the Japanese authorities only took fingerprints of Koreans living in Japan and not of Japanese nationals, which was discriminatory. Conversely, and in accordance with the principle of equality, everyone living in Korea, both Koreans and foreigners, was fingerprinted, and so there was no discrimination since the treatment was the same for all. The question would be discussed more thoroughly in the following periodic report.

41. As to the potential threats to privacy posed by certain electronic applications, he stated that the Korean Government would in its next periodic report indicate the action it would take to remedy the problem. He added by way of example that the Ministry of the Interior had been obliged to abandon plans for an electronic database to improve the citizen registration system as a result of the opposition they had provoked.

42. A ban on membership of political parties applied to civil servants and to judges. Religious groups as such were prohibited from taking a partisan stance, i.e. supporting a particular political party, but the ban did not apply to their members as individuals.

43. Mr. HWANG (Republic of Korea) said in reply to the question about the powers of the Constitutional Court that the Court had jurisdiction to rule on the constitutionality of internal laws and to bring charges against senior officials (ministers, judges etc.). It also resolved disputes over the extent of ministries' authority. Anyone who believed that his constitutional rights had been violated could apply to the Constitutional Court at any time.

44. In connection with the practice mentioned in paragraph 167 of the report, which, according to one member of the Committee, could hamper cross-examination, he explained that it was for the judge to decide whether the defendant should leave the courtroom. Such decisions were rare; they were normally taken when the witness was a young child or when it was necessary to protect the victim of a rape. In such cases, counsel for the defence remained in the courtroom to assist with the cross-examination.

45. Data from genetic databases were used only in police investigations. The ban on demonstrations on main roads, was justified by the fact that Seoul was a very populous city with enormous traffic jams. The law stated that such a ban had to be imposed by presidential decree and be limited to a very restricted area.

46. Concerning trade unionism in enterprises, the Law of March 1997 on relations with trade unions provided for multiple trade unions to be permitted from 1 January 2002. The delay had been thought necessary to standardize collective bargaining methods, since Korea had not had multiple trade unions in enterprises.

47. The CHAIRPERSON thanked the delegation for its information. Its replies indicated some progress in human rights, including restraints on disciplinary measures and the adoption of laws on the advancement of women and against domestic violence. She was pleased that Korea had withdrawn its reservations to article 7 and article 23, paragraph 4, of the Covenant, and hoped the remaining two would soon be lifted. The Committee still had a number of concerns, first among them being the National Security Law. The Korean delegation had indicated that the Government wished to revise that law but was opposed by public opinion and that the law reflected Korean society and its history. In the Committee's view, public opinion was never a justification for violating the Covenant and any text conflicting with international standards was unacceptable. The Committee was pleased to hear that Korea would take its recommendations into account, but it had already recommended reform of the National Security Law after discussing the previous report in 1992. It wished to know the status of the Covenant under Korean law, for paragraph 9 of the periodic report stated that the Covenant took precedence over domestic legislation. That might be the Government's official position, but it appeared that certain State organs disregarded it. The authority of the Covenant in Korea was therefore not clear. Additionally, the Committee feared that inadequate attention was paid to preventing and monitoring torture. Of 57 complaints of torture, 52 had been rejected out of hand or after charges had been brought, showing that investigative procedures were ineffective. Torture was a crime and the State had an obligation to investigate those complaints. In general, it appeared that the system of safeguards for people deprived of their liberty was inadequate and tended to increase the risk of torture. It that connection, she regretted the absence of a reply to the question about the importance attached to confessions as evidence of guilt. Likewise, article 9, paragraph 3, of the Covenant, required anyone arrested or detained to be "brought promptly before a judge", which did not always seem to be the case in Korea. Regarding article 14 of the Covenant, the Committee had misgivings about the information given in paragraph 167 of the periodic report, which gave the impression that a lawyer was not always present at the examination. It was also not fully satisfied of the independence of the magistracy, given the appointment procedure.

48. The Committee was pleased with the progress on the status of women, on which numerous laws had been passed. The delegation had indicated that public opinion was resistant to change: the Committee considered it the responsibility of the State to overcome that resistance. In that connection, the reaction of the Ministry of Justice to quotas for women was symptomatic. It appeared that there were also State organs opposing improvements in the lot of women. The Korean delegation seemed to have misunderstood the question about freedom of association and article 37 of the Constitution. The question was how a presidential decree could limit human rights when a decree was below a law in the hierarchy of instruments. In a

democracy, limitations were certainly necessary, but they should not take the form of general and abstract prohibitions. Finally, the Committee hoped that restrictions on freedom of association would be lifted, for the provisions mentioned in paragraph 222 of the periodic report were incompatible with the Covenant.

49. She congratulated Korea on the human rights measures taken and expressed a hope that the Committee's concluding observations would encourage the Government to convince the other State organs of the need for change.

50. Mr. KIM (Republic of Korea) hailed at the fruitful dialogue between his delegation and the Committee, whose comments and criticisms would spur his country on to further progress in human rights. He believed it essential to recognize problems and shortcomings and to rectify them. The Government and people of Korea had the will to advance further towards democracy and full respect for basic rights. He added that the questions which had not been answered would be dealt with in the third periodic report.

51. The Korean delegation withdrew.

The meeting rose at 6 p.m.